



August 5, 2010

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-122 – Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling

Dear Ms. Dortch:

We understand that the Commission is considering an order that would grant the relief that the Kansas and Nebraska Commissions seek in their Petition -- a declaratory ruling that the Commission has not preempted states from assessing state universal service charges on Voice over Internet Protocol (VoIP) services.¹

¹ Petition of Nebraska Public Service Commission and Kansas Corporation Commission, *Universal Service Contribution Methodology; Petition for Declaratory Ruling of the Nebraska Public Service Commission and the Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122 (July 16, 2009) ("Petition").

The undersigned companies and associations write today to ask the Commission to exercise caution as it considers this request. For the reasons detailed in this letter, we believe that as with all Internet services, VoIP is inherently interstate in nature. But should the Commission grant the Petition, we urge the Commission to do so narrowly and prospectively, and not to disturb or cast any doubt upon the Commission's longstanding determination that states are preempted from regulating the entry, rates, or other terms and conditions of VoIP services.²

As we have stressed to the Commission many times before, VoIP and IP-enabled services are multifaceted, any-distance services that have turned traditional concepts of location-based and device-based services on their heads. Using VoIP services, consumers can utilize multiple features that access different websites or IP addresses during the same communication session. They can perform different types of communications simultaneously. VoIP services route calls seamlessly to and from a wide variety of devices, some of which may be mobile, some of which may be nomadic and some of which may be fixed. It is precisely these attributes – which resist traditional regulatory categories – that make vast new opportunities available to consumers and businesses.

The Commission recognized the unique nature of VoIP in its 2004 *Vonage Order*. For exactly these reasons, the Commission established that over-the-top VoIP services are jurisdictionally interstate and subject to the Commission's exclusive jurisdiction. The Commission also found that it would reach that same conclusion with respect to *any* VoIP service — including facilities-based VoIP service — that shares certain basic characteristics, the most important of which is the offering of a suite of integrated features and capabilities that allow customers to originate and receive voice communications and access those other features and capabilities simultaneously. However, despite the Commission's clearly expressed intent to bring regulatory certainty to VoIP service through the *Vonage Order*, a number of state commissions continue to assert authority to regulate both facilities-based and over-the-top VoIP services.

As a result, we ask the Commission to consider carefully how or whether to rule on the Petition and to ensure that it does not depart from the settled precedent in the *Vonage order* that states do not have authority to regulate entry, rates, and other terms and conditions of VoIP services.

² *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶¶ 18, 31-32 (2004) (“*Vonage Order*”), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

Respectfully submitted,

AT&T

Google

Information Technology
Industry Council

Microsoft

National Association
of Manufacturers

Qwest

Skype

TechAmerica

The Telecommunications
Industry Association

Verizon

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